IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

WP(C).No. 35940 of 2007(S)

OA.622/2006 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH

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PETITIONERS:

1. THE DIRECTOR GENERAL, INDIAN COUNCIL OF AGRICULTURAL RESEARCH, KRISHI BHAVAN, NEW DELHI-110 114.

2. THE DIRECTOR, CENTRAL MARINE FISHERIES RESEARCH INSTITUTE, P.B.NO.1603, ERNAKULAM NORTH P.O., KOCHI-18.

BY ADV. SRI.P.JACOB VARGHESE, SC, ICAR

RESPONDENT:

P.R. LEOPOLD, S/O. P.X. RAPHEL,
T-9 (TECHNICAL OFFICER - SKIPPER),
CENTRAL MARINE FISHERIES RESEARCH INSTITUTE, P.B.NO.1603, ERNAKULAM NORTH P.O., KOCHI-18.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.Balakrishnan Nair &
K.P.Balachandran, JJ.

W.P.(C)No. 35940 of 2007 S

JUDGMENT

Balakrishnan Nair, J.

The petitioners were the respondents and the respondent was the applicant in O.A.No.62/06 before the Central Administrative Tribunal, Ernakulam Bench. The dispute raised in the above original application was concerning interpretation of Rule 6.2 of the Technical Service Rules of Indian Council of Agricultural Research. The said Rule, along with its Note, reads as follows:

> "6.2. There shall be a system of merit promotion from one grade to the next higher grade irrespective of occurrence of vacancies in the higher grade or grant of advance increment (s) in the same grade, on the basis of assessment of performance. The

persons concerned will be eligible for consideration for such promotion or for the grant of advance increment (s) after the expiry of five years service in the grade.

NOTE: Since merit promotions are restricted within the category, persons holding highest grades, viz. Grade T-I-3 in Category I, Grade T-5 in Category II and Grade T-9 in Category III are not eligible for further promotion. There is, however, no bar for grant of advance increments to such Technical personnel, who are in the highest grade of category, subject to the maximum of three increments within the grade."

2. The above quoted Rule provides for a system of merit promotion from one grade to the next higher grade, irrespective of occurrence of vacancies, subject to completion of qualifying service and also satisfying the prescribed

parameters. Those who could not be given promotion to the next higher grade will be granted advance increments subject to a maximum of three. In the case of persons, who are at the maximum of the scale of pay and are stagnating, the writ petitioners took the stand that they are not eligible for any increment in lieu of the promotion to the next higher grade. The said stand was taken relying on the Note to the above quoted Rule 6.2. The last sentence in the Note stipulates that the increment shall be granted within the grade. The word 'within the grade' has been interpreted by the writ petitioners to mean that those, who reach the maximum of the scale of pay, are ineligible for advance increments. Since the applicant has reached the maximum of the scale of pay, he was denied advance increments. The Tribunal, relying on its own decision in O.A.No. 401/96, overruled the said contention of the writ petitioners. The judgment in the above above original application has become

final. In view of the above position, we feel that there is nothing wrong in the decision of the Tribunal, contained in Exhibit P5 order. Further, if the interpretation of the petitioners is accepted, the same will result in denial of the benefit of advance increment to senior persons, who may be facing stagnation in the scale of pay. Normally, the promotion under the above quoted Rule is devised to take care of the situation, where the incumbents do not get promotion for want of vacancies. That means such persons will be seniors in service. If the interpretation is accepted, it will defeat the very purpose of the Scheme.

In the result, the writ petition fails and it is dismissed.

(K.Balakrishnan Nair, Judge)

5th December, 2007

(K.P.Balachandran, Judge)

tkv